

FILED
DISTRICT COURT OF GUAM

NOV - 9 2005 *AP*

MARY L.M. MORAN
CLERK OF COURT

**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

JAE JUNE PAK,

Plaintiff,

vs.

SIX UNKNOWN NAMES AGENTS,

Defendants.

Civil Case No. 05-00032

ORDER

Regarding Necessity of Payment of Filing Fee or
Necessity of Filing *In Forma Pauperis* Request

Plaintiff, Jae June Pak, ("Pak") presently detained in the Waseca Federal Correctional Institution in Waseca, Minnesota, has filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. However, because Pak names only agents employed by the U.S. Government as Defendant, the Court will reclassify the Complaint as a *Bivens* action. "Actions under § 1983 and those under *Bivens*¹ are identical save for the replacement of a state actor under § 1983 by a federal actor under *Bivens*." *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996)(quoting *Van Strum v. Lawn*, 940 F. 2d 406, 409 (9th Cir. 1991)).

PAYMENT OF FILING FEE OR APPLICATION TO PROCEED *IN FORMA PAUPERIS*

Pak has not paid the \$250.00 filing fee, nor has he filed an Application to Proceed *In Forma Pauperis*. If Pak is unable to pay the filing fee, he is required by 28 U.S.C. § 1915(a)(1) to submit an affidavit certifying that he is entitled to proceed *in forma pauperis* in this action. Pak will therefore be required to either pay the filing fee or submit an affidavit on a current court-approved form (enclosed with this Order) within 30 days from the date this Order is filed.

¹ *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

ORIGINAL

RULE 41 WARNING OF POSSIBLE DISMISSAL

Pak should take notice that if he fails to timely comply with every provision of this Order, or any order entered in this matter, this action will be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.)(district court may dismiss action for failure to comply with any order of the Court.), *cert. denied*, 506 U.S. 915 (1992).

IT IS THEREFORE ORDERED:

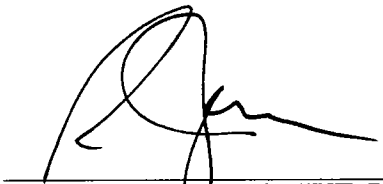
1) That Pak shall have 30 days from the date this Order is filed to either pay the \$250.00 filing fee or submit an affidavit as required by 28 U.S.C. § 1915(a)(1);

2) That at all times during the pendency of this action, Pak shall immediately advise the Court of any change of address and its effective date. Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS." The notice shall contain only information pertaining to the change of address and its effective date. The notice shall not include any motions for any other relief. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the federal Rules of Civil Procedure;

3) That the Clerk of Court is directed to enter dismissal of this action without prejudice and without further notice to Pak if Pak fails to timely pay the \$250.00 filing fee or timely submit an affidavit as required by 28 U.S.C. § 1915(a)(1); and

4) That the Clerk of Court is directed to provide to Pak a current court-approved form for filing a prisoner *in forma pauperis* affidavit pursuant to 28 U.S.C. § 1915(a)(1). These documents should include: a) an Application to Proceed Without Prepayment of Fees and Affidavit; b) a Consent to the Release of Trust Account Information and to the Collection of Fees from Trust Account Form; and c) Instructions for Prisoner's *In Forma Pauperis* Application.

DATED this 9 day of November, 2005.


ROBERT CLIVE JONES*
United States District Judge

* The Honorable Robert Clive Jones, United States District Judge for Nevada, by designation.